

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTES

Date: February 27, 2023	Time: 1 hour, 30 minutes 1:59 p.m. to 3:29 p.m.	Judge: WILLIAM H. ORRICK
Case No.: 17-cv-06748-WHO	Case Name: Diaz v. Tesla, Inc.	

Attorneys for Plaintiff: Larry Organ, Michael Rubin, Dustin Collier, and Cimone Nunley

Attorneys for Defendant: David Posner, Asher Griffin, and Mari Henderson
Joseph Alm client representative present

Deputy Clerk: Jean Davis

Court Reporter: Ruth Levine Ekhaus

PROCEEDINGS

Counsel appear for pretrial conference and hearing on motions in limine. The Court reminds counsel again that they will be bound in the new trial on damages by the evidence presented in the previous trial. No new witnesses or exhibits will be allowed except for Tesla's corporate representative (PMK) given the previous representative's separation from employment. The testimony of the PMK may not be materially different than that of the previous PMK.

Each of defendant's motions in limine is denied. All but the first two of plaintiff's motions in limine are denied. Counsel's requests for further clarification of the Court's rulings on motions in limine heard and responded to. In addition, depositions may be read as at the first trial or may be shortened; no new portions may be selected. Mr. Martinez may be called as a witness in plaintiff's case.

The Court reviews the voir dire process, including the supplemental questions that will be added to the standard jury questionnaire. The parties should receive questionnaire responses on March 22. A hearing will be held via Zoom at **1:30 pm on March 24** to determine if any prospective jurors should be excused on the basis of their responses.

COVID-19 protocols for trial discussed. All persons present in the courtroom will wear masks except for vaccinated witnesses and counsel when they are speaking.

Trial will begin Monday, March 27, at 8:30 a.m. with jury selection to be followed by preliminary instructions, opening statements and the first witness if time allows. The trial day will begin at 8:00 a.m. with an attorney conference. The trial will start at 8:30 a.m. On Tuesday, Wednesday and Thursday, the trial day will end at 1:30 p.m. On Friday, the trial will run all day.

Preliminary instructions discussed and counsels' objections to the proposed draft of jury instructions heard. Defense shall file proposed revisions to the draft instructions on **February 28** and, in opposition, plaintiffs may file a list of citations with brief descriptions by **March 3**. The Court will post revised instructions thereafter.

The Court is inclined to use the plaintiff's proposed verdict form with minimal modifications.

Admission of Exhibit 106 discussed. The Court will need to review that specific exhibit before ruling on its admissibility in this trial. Argument also heard concerning the appropriate scope of anticipated testimony, particularly concerning Mr. Wheeler. The Court will review his testimony. The Court orders plaintiff to file any testimony by Mr. Diaz, at trial or in deposition, that indicates whether he was aware of the "feces incident" or when he became aware of it. This filing should occur by **March 3, 2023**. Defendant may file any relevant testimony by Mr. Diaz or Mr. Wheeler that it wants the Court to consider on that date as well.